

Tuesday, 19 December 2023

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(10.00 am)

LADY SMITH: Good morning. Today is the last day I'm sitting before Christmas and we move to inviting some submissions from Scottish Ministers, but first of all I'll turn to Mr Peoples.

MR PEOPLES: Yes, my Lady.

As your Ladyship is aware, we did complete the evidential part of this chapter on Friday and today is an opportunity for the Scottish Ministers to make some closing responses to the evidence to date. I can say that they have produced a written statement -- an interim statement -- which I think Ms O'Neill will at least speak to or at least summarise in a moment or two.

Can I just say, I'll give the reference that we've given to that document at the moment, it's SGV-000102975. Can I just also say, because it does make reference to the current suicide prevention strategy, Talk to Me, and there has also been produced along with the interim closing statement another document, which is part of the guidance in relation to that strategy. I'm not sure it needs to be referred to today, but I'll just give the reference to show it has been produced.

LADY SMITH: That would be helpful. It is a Scottish Prison

1           Service current document.

2   MR PEOPLES:  Yes, it's part of the guidance that is applied  
3           currently.  That document is SGV-000102974, but as I say  
4           I don't think it will be necessary today to go through  
5           that at this stage.

6           With that introduction, my Lady, I just really hand  
7           over to Ms O'Neill to no doubt pick out some of the  
8           submissions.  I don't think she intends to go through it  
9           paragraph by paragraph, but it's very much a matter for  
10          her.

11  LADY SMITH:  Yes.

12          Ms O'Neill, thank you for providing your interim  
13          closing submissions -- as you've entitled them -- in  
14          advance, which I have looked at.  There are obviously  
15          a number of points that you wish to make, including some  
16          in which you take issue with one or two things that have  
17          been mentioned and a helpful section at the end when  
18          you're beginning to look to the future, although we're  
19          not quite sure whether it's going because that will  
20          depend on legislation.

21          Please do, if you're ready, go ahead and address me  
22          in relation to your submissions.

23  MS O'NEILL:  My Lady, thank you.

24          Just before I do that, just to mention the document  
25          that was produced with the closing submissions.

1 My Lady, the point here was that in preparing these  
2 submissions it was identified that quite a lot of the  
3 guidance in relation to Talk to Me had been produced to  
4 the Inquiry but this particular document had not been  
5 included in the bundle, so it was for completeness  
6 rather than anything else, my Lady.

7 I've also had a discussion with Mr Peoples this  
8 morning about an interim report which is referred to in  
9 these submissions, which we can also make available to  
10 the Inquiry, which we'll do immediately after this  
11 hearing.

12 LADY SMITH: That would be helpful, thank you.

13 Closing submissions by Ms O'Neill

14 MS O'NEILL: My Lady, the Inquiry does have the written  
15 statement that has been produced and I would adopt that  
16 and it prevails if in my summary I miss out anything  
17 that's in the written submission.

18 As your Ladyship will understand, these are  
19 submissions on behalf of the Scottish Ministers, which  
20 in this context includes the Prison Service and  
21 Education Scotland as agencies of the Scottish  
22 Government.

23 The Inquiry and senior counsel to the Inquiry have  
24 helpfully made clear that this does not represent the  
25 last opportunity for core participants to make

1       submissions in relation to Phase 8 and we've therefore  
2       taken the view we should address only those matters  
3       which seem particularly distinct to the SPS elements of  
4       the evidence already given. Scottish Ministers are  
5       conscious that there's a very good deal of evidence  
6       still to be heard in Phase 8 and that that will include  
7       substantial further evidence from applicants on their  
8       experiences of abuse in contexts such as secure  
9       accommodation.

10       In those circumstances, the view has been taken that  
11       a number of the wider themes such as restraint,  
12       punishment, isolation and inadequate provision of  
13       education should be held over to the submissions at the  
14       end of Phase 8 so that they can accommodate all the  
15       evidence that is yet to be led.

16       We do anticipate revisiting those issues and indeed,  
17       my Lady, the question of legislative reform in the  
18       closing submissions to be delivered at the conclusion of  
19       Phase 8.

20       Part 2 of the written statement describes the  
21       Scottish Ministers' interest in this part of the  
22       Inquiry's work. I don't propose to read that out. It's  
23       well known to the Inquiry.

24       Part 3 deals with evidence given on behalf of the  
25       Scottish Ministers. The opening statement, which I gave

1 for the Ministers, referred to the Inquiry's request for  
2 information from the Scottish Prison Service and from  
3 Education Scotland in relation to Phase 8 and  
4 I explained what had been done to respond to those  
5 requests for information.

6 As anticipated, at that time, oral evidence was  
7 of course then given to the Inquiry by the Chief  
8 Executive of SPS, Teresa Medhurst, the Scottish  
9 Government's Director General for Justice and Education,  
10 Neil Rennick and Education Scotland's Strategic Director  
11 for Scrutiny, Janie McManus.

12 In the course of their oral evidence various  
13 questions were asked of these witnesses in relation to  
14 which they undertook to provide further information in  
15 writing to the Inquiry. That was provided by email to  
16 the Inquiry on 7 December, to which was attached a table  
17 of answers to questions arising from the evidence of  
18 Ms Medhurst and Mr Rennick. I think Mr Peoples made  
19 reference to that table when he was revisiting their  
20 evidence with them last Friday.

21 LADY SMITH: That's right.

22 MS O'NEILL: There was a further email or indeed an email  
23 earlier on 6 December, with a letter from the Chief  
24 Inspector of Education, dealing with some issues  
25 relating to the Education Scotland evidence and the

1 Inquiry is invited to have regard to that evidence.

2 My Lady, part 4 of this submission deals with  
3 applicants' experiences. In the report prepared by SPS  
4 and submitted to the Inquiry in advance of the Phase 8  
5 hearings, the Scottish Ministers and SPS unequivocally  
6 acknowledged that children had been abused while in  
7 their care.

8 The Scottish Ministers acknowledge that children  
9 were also subjected to practices, conditions and regimes  
10 that were either abusive or otherwise plainly  
11 unacceptable.

12 The report accepted and acknowledged that children  
13 committed to Longriggend Detention Centre, Glenochil,  
14 Barlinnie and Polmont Young Offenders Institutions were  
15 subjected to physical abuse, including disproportionate  
16 or otherwise inappropriate use of control and restraint  
17 techniques by staff, sexual abuse, verbal abuse and  
18 psychological and emotional abuse, including bullying  
19 and neglect. That abuse took place between peers and by  
20 adult prisoners or staff.

21 The report contains substantial information from the  
22 historical records available to SPS, which evidenced the  
23 abuse that had been acknowledged and some of that  
24 information was spoken to by Teresa Medhurst and  
25 Neil Rennick when they gave oral evidence to the

1 Inquiry.

2 The evidence that has been given to the Inquiry so  
3 far by applicants in writing and in person has conveyed  
4 the nature, scale and impact of the abuse suffered by  
5 children in these institutions in a way that the report  
6 could not.

7 The Inquiry has heard evidence from applicants who  
8 were children in these institutions in the 1950s, 1960s  
9 1970s, 1980s, 1990s and 2000s. It's not possible to do  
10 full justice to that evidence in these submissions.

11 It included appalling evidence of abuse perpetrated  
12 by prison staff as well as peer-on-peer abuse that  
13 should not have been allowed to happen. There was  
14 evidence of physical abuse in almost every conceivable  
15 form, that was as routine as it was serious, as well as  
16 sexual and emotional abuse.

17 There was evidence about failures to protect  
18 children from the mental health impacts of their prior  
19 adverse child experiences and of their incarceration  
20 during the time they spent within prison custody and  
21 from the impacts of mental health difficulties being  
22 experienced by those around them.

23 One striking example was the evidence of 'Bruce'  
24 that was read in on 17 November 2023, where he described  
25 his attempt to get help when his cellmate attempted

1 suicide, the response to which was advice that he should  
2 ring the bell in his cell if anything else happened.

3 LADY SMITH: Of course the point he went on to make there  
4 was that well if he did ring the bell experience told  
5 him that the screws, as he called them, never came or  
6 they took their time, so that wasn't exactly feeling  
7 helpful as far as he was concerned.

8 MS O'NEILL: My Lady, there was nothing good about the  
9 evidence but the advice in the first instance was  
10 obviously wholly inadequate by way of response.

11 There was evidence of children and young people  
12 being placed in cells with and being exposed in a range  
13 of contexts to adults who presented a serious risk to  
14 them.

15 There was evidence of wholly unacceptable practices  
16 in relation to punishment and control, including  
17 solitary confinement.

18 As powerful was the evidence given about practices  
19 that at one level might be thought to be low level or  
20 petty but which were acts of cruelty clearly designed to  
21 inflict emotional pain. The evidence given by  
22 Derek Allan that officers would rip up personal  
23 photographs is only one example.

24 LADY SMITH: There was a particular poignancy about that if  
25 I remember rightly, Ms O'Neill, because it wasn't just



1 photographs being destroyed, but prisoners would try to  
2 save the foil from their tobacco and make little  
3 photograph frames from it and those frames that they'd  
4 painstakingly made from their smoothed-out foil from  
5 saving it from their tobacco would also get ripped up.

6 MS O'NEILL: My Lady, it's why I in drafting these  
7 submissions picked out this example because -- and  
8 everyone will have a different reflection on different  
9 parts of the evidence, for me this was one of the most  
10 powerful pieces of evidence that was given.

11 LADY SMITH: There was no suggestion that there was anything  
12 wrong in having personal photographs or making little  
13 photograph frames out of your saved foil.

14 MS O'NEILL: No, my Lady, I think it speaks to what evidence  
15 has been given all along about the power dynamics in the  
16 prison environment and the abuse of that power.

17 LADY SMITH: Absolutely.

18 MS O'NEILL: The evidence also spoke to practices,  
19 particularly the placing of children in cells and prison  
20 environments alongside violent adult prisoners that  
21 created significant risk for those children and which  
22 risks were realised.

23 The evidence also makes plain the extent to which  
24 the State failed children in these institutions by  
25 failing to provide suitable and adequate education and

1 to create opportunities for development and  
2 rehabilitation.

3 Those failures had as significant an impact on the  
4 life chances and adult experiences of applicants as the  
5 more direct abuse suffered by them.

6 The Scottish Government did not apply to counsel to  
7 the Inquiry to have questions asked of the applicants  
8 who gave evidence. The Scottish Government accepts and  
9 believes the evidence that has been given by applicants  
10 about the abuse that they experienced.

11 The written report submitted to the Inquiry by the  
12 Scottish Prison Service contains apologies for the abuse  
13 that was identified in the research that was done to  
14 prepare the report. In her oral evidence to the Inquiry  
15 on 2 November, Teresa Medhurst apologised on behalf of  
16 the Scottish Prison Service to the children who were  
17 abused when in the care of the SPS and its predecessors  
18 and to the families of those children.

19 She also recognised, accepted and apologised for the  
20 impact of that abuse on the physical, emotional and  
21 psychological well-being of the children who were  
22 abused, both during and long after their departure from  
23 prison custody.

24 When giving evidence on behalf of Education Scotland  
25 on 28 September Janie McManus apologised for failings in

1 inspection regimes that contributed to the creation of  
2 environments that enabled the abuse of children to take  
3 place.

4 Neil Rennick in his oral evidence endorsed on behalf  
5 of the Scottish Government the apologies given by  
6 Ms Medhurst and Ms McManus. He acknowledged that the  
7 harm experienced by children in prison settings did not  
8 exist in isolation from the operation of the wider  
9 justice system and the decisions taken by Government and  
10 policies set by Ministers.

11 He apologised for the contribution that Government  
12 decisions and the action of officials made to the abuse  
13 experienced by children accommodated in prisons and YOI  
14 settings.

15 Each of the witnesses emphasised their commitment  
16 and that of the Scottish Government to learn from the  
17 experience of survivors and from the work of the Inquiry  
18 and to ensure that all possible steps are taken to care  
19 for and protect from harm the children and young people  
20 in the care of the State.

21 Those apologies were given before the Inquiry heard  
22 the evidence given by applicants and that evidence  
23 underlines the need for those apologies. When they gave  
24 further evidence on 15 December, Ms Medhurst and  
25 Mr Rennick reflected on the evidence that had been given

1 by applicants and made it clear that they wished to  
2 emphasise that their apologies extended to the  
3 individual survivors who gave evidence as well as to  
4 survivors who for whatever reason have not or have not  
5 yet given evidence to the Inquiry.

6 Ms McManus was not recalled, but would wish her  
7 apology to be understood in the same terms.

8 As in earlier stages of this Inquiry, the Scottish  
9 Government wishes to acknowledge the courage of all the  
10 survivors who gave evidence about their experiences and  
11 about the impact of childhood abuse on their future  
12 lives and to record its gratitude to them for  
13 contributing to the Inquiry.

14 My Lady, there then follows some sections of this  
15 submission dealing with particular issues dealt with in  
16 the evidence.

17 The first concerns the making of complaints and the  
18 raising of concerns.

19 The Inquiry has been concerned throughout its work,  
20 including in earlier phases, about the availability of  
21 mechanisms for children and their families to make  
22 complaints and raise concerns about abuse. That  
23 includes concerns about the disconnect in many  
24 circumstances between the mechanisms described in  
25 policies and procedures and the practical reality for

1 the children and families involved.

2 The Scottish Prison Service acknowledges and accepts  
3 that inadequate complaints and reporting procedures will  
4 have affected the response to abuse or allegations of  
5 abuse within prison environments.

6 Part D of the report provided by the SPS to the  
7 Inquiry includes practical examples of historical  
8 complaints processes in operation in relation to  
9 allegations of abuse and highlights inadequacies in  
10 those complaints processes.

11 SPS acknowledges and accepts that there are a range  
12 of factors that affect the willingness and ability of  
13 those in its care to make complaints or raise concerns.  
14 It agrees with the evidence given by Professor Coyle  
15 that raising a complaint in a prison context is made  
16 more difficult because of the inherent imbalance of  
17 power that exists within that context.

18 It also agrees with Professor Coyle that one cannot  
19 look at the complaint or grievance system in isolation,  
20 because that will be largely decided by the ethos of the  
21 establishment. As he put it:

22 "If there is a degree of openness in sharing and  
23 understanding and recognising where the boundaries are  
24 and not to cross boundaries then that will contribute  
25 I think or will make it easier when there is a genuine

1 complaint to be dealt with openly and for the prisoner  
2 not to feel aggrieved."

3 Equally, factors relating to the vulnerability of  
4 the individual being accommodated may also make it  
5 difficult for them to complain. This was addressed by  
6 Sue Brookes for the Scottish Prison Service, who gave  
7 evidence to the Inquiry on 29 September.

8 In her written statement, she gave evidence that as  
9 a matter of fact young people do not complain as often  
10 as adults:

11 "... whether or not they feel they have a reason to  
12 do so."

13 Her explanation for the difference was:

14 "This is probably because they are more vulnerable  
15 and have less confidence and their relationship with  
16 authority hasn't been good so they don't believe action  
17 will be taken. Some also have learning difficulties so  
18 aren't able to fill in a complaint form. This means we  
19 have to work quite hard not just with the complaints  
20 process but provide opportunities for much more formal  
21 engagement around relationships. Most complaints come  
22 where they have a good relationship with a member of  
23 staff who helps them fill in the form or help them  
24 phone."

25 In addition to these factors, the SPS considers that

1 a key factor that continues to inhibit individuals in  
2 its care from making complaints against others in  
3 custody is the long-standing culture within prisons of  
4 those in custody not complaining for fear of being  
5 viewed as a grass.

6 Prisoner culture appears to have had and continues  
7 to have a significant impact on a person in custody's  
8 appetite to complain or raise concerns relating to  
9 others also accommodated there.

10 This remains a substantial barrier to the detection  
11 and management of instances of abuse among those within  
12 custody.

13 The Inquiry has heard some evidence about the  
14 current complaints processes which is not accepted by  
15 SPS. In particular, the evidence of the Chief Inspector  
16 of Prisons for Scotland was that all complaints must be  
17 in writing and any which are not will be rejected.

18 In the submission of SPS, this evidence does not  
19 accurately reflect the current complaints system.  
20 Information about historical and current complaints  
21 processes is contained in Part C of the report prepared  
22 by SPS for this phase of the Inquiry's work and current  
23 processes were spoken to by Teresa Medhurst in her  
24 evidence on 1 and 2 November.

25 SPS has over time increased the routes for complaint

1 to ensure the complaints system is accessible and fit  
2 for purpose. The current formal complaints process  
3 requires complaints to be made in writing to the  
4 Residential or appropriate First-line Manager or  
5 directly and confidentially to the Governor in charge.

6 However, outwith the formal prescribed avenues for  
7 raising complaints, complaints can be and often are made  
8 in writing or orally via legal representatives, with  
9 Independent Prison Monitors, with counsellors and with  
10 MSPs or with the police, as spoken to by Teresa Medhurst  
11 in her evidence.

12 Even where no complaint has been received from  
13 a person in custody, instances of assault or physical  
14 violence that are witnessed or established by prison  
15 staff to have taken place or likely to have taken place  
16 are referred to the police.

17 SPS is of the view that the way in which complaints  
18 are made by those in custody and handled by the  
19 organisation must be considered in the context of how  
20 a prison operates in practice and the role of --

21 LADY SMITH: Can I just take you back for one moment, I have  
22 something noted here.

23 When you are talking in 5.12 about any instances of  
24 something happening that's violent, having to be  
25 reported to the police or if they're likely to have



1 taken place they're to be reported to the police. Is  
2 that getting close to a form of mandatory reporting  
3 that's operating within the Prison Service or not?

4 MS O'NEILL: My Lady, I think it is a matter of policy  
5 within the Prison Service and therefore it's not  
6 a matter for the individual discretion of individual  
7 prison officers or the prison Governor and the  
8 submission deliberately refers to assault or physical  
9 violence established to have taken place or likely to  
10 have taken place. For absolute clarity, my Lady, as  
11 I understand it, there is a degree of screening and  
12 I don't want to overemphasise that. There may be  
13 complaints which prison staff can immediately discount  
14 as being vexatious or being a reference to something  
15 that has not taken place, but if there is any suggestion  
16 that this may have taken place then it is referred to  
17 the police. That's my understanding.

18 LADY SMITH: You may not know the answer to this, but let me  
19 ask it anyway. Do you know whether a failure to make  
20 such a report would be treated as a type of misconduct?

21 A. I don't know the answer to that, my Lady, but it's  
22 something that I can find out.

23 LADY SMITH: I think I would be quite interested and where  
24 is it that it's built into training or induction when  
25 somebody starts working for the service.

1 MS O'NEILL: My Lady, we'll follow that up and provide that  
2 information to the Inquiry.

3 LADY SMITH: Thank you.

4 MS O'NEILL: My Lady, I was looking at paragraph 5.13 and  
5 then to say that staff are directed and expected to  
6 establish positive, supportive relationships which  
7 positively impact on a person's experience in custody.  
8 It is often the case that concerns are raised verbally  
9 on a more informal basis and staff are expected to make  
10 efforts to resolve issues and concerns at the lowest  
11 possible level.

12 LADY SMITH: When you say "lowest possible level", what do  
13 you have in mind?

14 MS O'NEILL: I have in mind, my Lady, as part of the  
15 day-to-day operation of the prison without there being  
16 a necessity of a formal complaints process, so if the  
17 officer can through some form of day-to-day intervention  
18 resolve the concern, that's what would be expected of  
19 them.

20 LADY SMITH: I'm just wondering what types of things might  
21 happen. The simplest is just to fix an inmate's  
22 complaint about something that is a daily irritation  
23 that he thinks is unreasonable.

24 MS O'NEILL: My Lady, I have in mind certainly complaints  
25 about for example physical environment or conditions

1           that might be capable of being resolved relatively  
2           easily and without the need, for example, for a written  
3           complaint and a process to be followed. The fixing of  
4           it, as your Ladyship describes it.

5   LADY SMITH: The sort of thing at the time that I'm in the  
6           queue for the showers in the morning I'm early, I'm one  
7           of the early batch and the water's never hot enough.  
8           That sort of thing.

9   MS O'NEILL: I'm not sure I've seen precisely that example,  
10          my Lady, but that would strike me as something that  
11          ought to be resolved without formal complaint.

12   LADY SMITH: But if you had say a complaint about bullying,  
13          are you saying that would still be something that would  
14          be hopefully capable of resolution on a lowest possible  
15          level and if so how?

16   MS O'NEILL: My Lady, what I'm not going to do is, to use  
17          the phrase, busk an answer to that question without  
18          taking instructions.

19                I would anticipate the response to that being that  
20                it would depend on the nature and severity of the  
21                allegation and that there might be behaviour that would  
22                fall within the scope of bullying that might be  
23                relatively low level and that with intervention by  
24                someone with relationships of trust with those concerned  
25                could be resolved.

1           But I say that without instructions on the specifics  
2           and whether bullying would be always dealt with in  
3           a formal way is something I would need to check.

4   LADY SMITH: I'm not trying to catch you out, Ms O'Neill,  
5           but it does strike me it's very easy to say, "Oh, but  
6           complaints can be made informally, and the practice is  
7           to try to resolve them at the lowest level possible" and  
8           you can get a nice picture of maybe something akin to  
9           mediation, something such as my example of instructing  
10          a plumber to sort the water, but it may not be that easy  
11          and I'm wondering whether the system then does get to  
12          the stage of assisting the inmate to say, "Look, this is  
13          a matter that needs to go into the formal process. Are  
14          you prepared to do that? And somebody will help you do  
15          it".

16   MS O'NEILL: My Lady, that is what I understand to be the  
17          position, but it's clearly something that can be  
18          followed up by way of example to the Inquiry of the  
19          kinds of incidents that would be dealt with at that low  
20          level.

21   LADY SMITH: Thank you.

22   MS O'NEILL: My Lady, the importance and impact of positive  
23          relationships between prison staff and those in custody  
24          was spoken to by Sue Brookes and SPS and the Scottish  
25          Ministers endorse her evidence.

1           They consider that the current complaints system is  
2           more accessible than earlier complaints mechanisms, but  
3           they also accept that further improvements can be made  
4           and welcome the Chief Inspector's aspiration to  
5           undertake a thematic review of the complaints procedure.

6           The SPS remains committed to considering what  
7           further improvements could be made to the system and  
8           recognises and values the role that the Chief Inspector  
9           has played and will continue to play in identifying and  
10          bringing about improvements to prison custody.

11          On one specific issue raised by Professor Coyle,  
12          Ministers do not consider there is currently a case for  
13          the creation of a Prisons Ombudsman for Scotland. They  
14          consider that the Scottish Public Services Ombudsman,  
15          who absorbed prison complaints within her remit  
16          following the abolition of the Scottish Prison  
17          Complaints Commission in 2010, provides  
18          a fit-for-purpose service and the size of the prison  
19          estate allows that ombudsman to perform her role  
20          effectively and Ministers are not aware of any  
21          significant concerns suggesting the contrary.

22          My Lady, the next section concerns the use of safer  
23          cells. The Scottish Ministers have given careful  
24          consideration to the evidence of Professor Linda Allan,  
25          whose written statement was read into evidence on

1 22 September 2023. That statement concerns the death of  
2 Professor Allan's daughter Katie in custody.

3 As with any death in custody, Katie Allan's death is  
4 a matter of profound regret to the SPS, as is the pain  
5 and suffering that her death has caused to her family  
6 and friends.

7 As Professor Allan noted in her evidence, a Fatal  
8 Accident Inquiry into Katie's death will take place  
9 early next year. In the circumstances, the Scottish  
10 Ministers do not consider it would be appropriate to  
11 attempt to give evidence in this Inquiry at this time  
12 about the circumstances surrounding Katie's death or to  
13 express agreement or disagreement with the evidence  
14 contained in Professor Allan's statement.

15 That general position is subject to exception only  
16 in relation to what are known as safer cells, which are  
17 more commonly -- at least in women's prisons and in  
18 relation to young people -- referred to as "safe rooms"  
19 and the description attributed to those rooms by  
20 Professor Allan as being torture cells.

21 The Scottish Prison Service does not accept this  
22 description. The SPS very clearly recognises the impact  
23 of isolation in a suicide prevention context. For that  
24 reason, safer cells are used only where deemed  
25 absolutely necessary for the preservation of a life of

1 a person in custody.

2 Enhanced governance arrangements are implemented  
3 when a safer cell requires to be used and every effort  
4 is made to ensure the safer cell environment is as  
5 comfortable and therapeutic as it can be and that  
6 reflects the Scottish Prison Service's Talk to Me  
7 strategy and guidance.

8 As noted earlier, the Inquiry heard evidence on  
9 29 September from Sue Brookes, Interim Director of  
10 Strategy and Stakeholder Engagement for the SPS. She  
11 gave evidence about the evolution of policy and practice  
12 within the SPS in relation to the protection of  
13 individuals at risk of self-harm, particularly in  
14 response to the Chiswick report.

15 In her evidence she discussed with senior counsel to  
16 the Inquiry the purpose and use of safer cells, which  
17 she also referred to as safe rooms. She explained the  
18 need within the prison estate to have resource which is  
19 ligature free, where we can be more confident that  
20 people are not going to hurt themselves, that a person  
21 being accommodated in a safer cell would be receiving  
22 pretty intensive support and that when they're used  
23 they're used for as short a time as absolutely possible.

24 Ms Brookes's evidence was that the Act2Care process,  
25 of which safer cells were a part, significantly reduced

1 the number of deaths that were occurring in custody.  
2 She acknowledged that there may still be individuals who  
3 are not open about their vulnerability because they do  
4 not want to be managed in a way that involves safer  
5 cells, but she said:

6 "It is significantly better than the situation we  
7 were in and Talk to Me has evolved from Act2Care and it  
8 will evolve further as we conduct the next review."

9 The Scottish Ministers endorse the evidence given by  
10 Ms Brookes and invite the Inquiry to have regard to the  
11 Talk to Me strategy and associated guidance and the  
12 Scottish Ministers invite the Inquiry to have regard to  
13 this evidence and to find that the use of cells for  
14 children may be appropriate in certain circumstances.

15 My Lady, the next section deals with recruitment,  
16 training and employee culture. The Inquiry has heard  
17 substantial evidence of abuse perpetrated by prison  
18 staff, more than 100 applicants recollect a range of  
19 forms of abuse, including physical, sexual,  
20 psychological and emotional abuse.

21 The report submitted by the SPS to the Inquiry  
22 discloses evidence of unsuitable individuals serving as  
23 prison officers. One example being a staff member being  
24 found in 1990 to be serving with undisclosed  
25 convictions.



1           The SPS recognises that historic recruitment  
2 practices were inadequate and any practices which  
3 allowed for the appointment of unsuitable staff are  
4 likely to have been a contributory factor to the abuse  
5 of children.

6           The Inquiry has also heard evidence about the  
7 current approach to the recruitment of staff and the  
8 evidence of Professor Coyle that there were no formal  
9 qualification requirements for prison officers was  
10 raised with Teresa Medhurst on 2 November, when she gave  
11 her oral evidence.

12           The absence of a specific regulator akin to the  
13 Scottish Social Services Council for prison staff was  
14 also commented upon by senior counsel to the Inquiry  
15 during the evidence of Professor Coyle and that of  
16 Sue Brookes.

17           The report provided to the Inquiry by SPS provides  
18 detailed information about historical and current  
19 processes. There are some variations to processes  
20 depending on role but generally recruitment currently  
21 involves a number of steps, including situational  
22 judgment tests, cognitive ability tests, group exercises  
23 and a values-based interview as well as medical  
24 assessment and an enhanced disclosure check.

25           Teresa Medhurst explained that the decision to

1       remove a requirement for specific qualifications for  
2       prison officers was motivated by a desire to improve  
3       diversity within the Scottish Prison Service and  
4       encourage social mobility. My Lady, she also spoke to  
5       that I think on Friday as to the range of people she now  
6       sees applying to join the Prison Service.

7             She gave evidence about the cognitive tests used by  
8       the SPS and the requirement for candidates to achieve  
9       four Scottish vocational qualifications during their  
10      probationary period and she noted that some candidates  
11      do not achieve those requirements and do not proceed  
12      further.

13            Professor Coyle explained that he felt that prison  
14      officers would get much more confidence if they were  
15      given a qualification and ongoing support and recognised  
16      as a professional body of men and women. The Scottish  
17      Prison Service agrees with the view of Professor Coyle  
18      in this respect and Teresa Medhurst said so on  
19      15 December.

20            The SPS remains committed to exploring options for  
21      professionalisation and current plans are to explore  
22      that for new Residential Officers in the first instance.

23            In relation to training, the SPS does not accept  
24      that the evidence of Professor Coyle on 6 October  
25      accurately reflects the current arrangements for

1 training prison officers, insofar as he stated that  
2 training provisions for prison officers were generic in  
3 nature.

4 Under the current framework, all new prison officers  
5 must complete a compulsory six-week block of induction  
6 training, which includes core training requirements on  
7 appointment and certain courses require refresher  
8 training to be completed on an annual, bi-annual or  
9 tri-annual basis.

10 Individual staff training and development needs are  
11 identified through an appraisal process and are  
12 implemented through a personal development learning  
13 plan.

14 All staff must undergo training on suicide  
15 prevention and in 2009 training was introduced for  
16 front-line staff on meeting the needs of survivors of  
17 childhood sexual abuse within adult male establishments.

18 There is specific training for officers working with  
19 young people, both in their initial training and in the  
20 core ongoing training programme.

21 New officer recruits who will be working in  
22 establishments which accommodate young people undertake  
23 a five-day caring for young people in custody course and  
24 that course covers the laws, policies and legislation  
25 that affect young people in more depth.

1           The training programme is specifically designed to  
2 meet the needs of children and young people. After the  
3 intake training there is ongoing core training which is  
4 specific to each individual employee depending on their  
5 role and training needs.

6           Officers who are working with children and young  
7 people will continue to undertake relevant training and  
8 officers working with females will undertake the  
9 five-day caring for women in custody course. Managers  
10 working with the new women's estate have also completed  
11 training in gender-responsive and trauma-informed  
12 leadership.

13           The SPS endorses the evidence of Sue Brookes given  
14 on 29 September as to the various forms of training  
15 received by staff and which represents an accurate  
16 summary of the current position.

17           In relation to prison culture the Inquiry has heard  
18 evidence from applicants of wholly unacceptable staff  
19 attitudes and behaviours to young people and children.  
20 Applicants generally describe the brutal and  
21 intimidating nature of staff, including assaults by  
22 staff and physical violence used as a means of  
23 maintaining control and of reinforcing the unequal power  
24 relationship between officers and those in their  
25 custody.

1           The SPS acknowledges and accepts that the culture  
2           that is created and maintained within its establishments  
3           is crucial to its mission and to the care of those  
4           within its custody. It also acknowledges and accepts  
5           significant failures in the past in relation to culture.

6           The SPS has taken and continues to take various  
7           steps to assess and improve its overall organisational  
8           culture. These include significant leadership and  
9           management development opportunities for more senior  
10          staff, moving towards becoming a more trauma-informed  
11          organisation and the scoping of evaluation work to  
12          deliver an assessment of the organisation's culture.

13          The importance of prison officers being better  
14          informed about the needs of children and young people  
15          was spoken to by Teresa Medhurst on 15 December,  
16          including the importance of prison officers  
17          understanding how they can use their interpersonal  
18          skills, influence and relationships to deescalate  
19          conflict.

20          My Lady, the next section relates to reform of the  
21          law relating to children in custody. It describes the  
22          legislative progress of the Bill that is before  
23          Parliament. I don't propose, my Lady, to read that  
24          section because I think it's well known to the Inquiry  
25          and Neil Rennick mentioned on Friday the updates to the

1 legislative programme and the anticipated conclusion of  
2 stage 2 of that Bill's passage.

3 LADY SMITH: Help me with this, Ms O'Neill, if you were  
4 asked, well at the moment what do you see in your mind's  
5 eye as being the vision that Scottish Government seem to  
6 be working towards, what is it?

7 MS O'NEILL: It's that no child is in the prison estate and  
8 that care is provided in alternative forms and that that  
9 form will be secure accommodation where the needs of the  
10 child require it for their own care and protection and  
11 for the care and protection of others.

12 LADY SMITH: That's very easy to say, but of course one has  
13 to recognise that in the broad spectrum of children,  
14 under-18-year olds, who will have to be provided for,  
15 there is a variety between those who are there because  
16 of some minor trouble they got into, as you say others  
17 who can't safely be cared for in the family setting at  
18 all and they actually need a secure setting for various  
19 reasons, possibly at the Children's Hearing can  
20 articulate. You have those who may have committed  
21 a very serious offence. That's quite challenging,  
22 isn't it?

23 MS O'NEILL: My Lady, I think those behind me are already  
24 horrified that I would take it upon myself to announce  
25 a vision. They'll be even more horrified if I say much

1 more on this topic at this stage.

2 What I would say is that Mr Peoples and I had  
3 a conversation this morning about precisely this topic  
4 and about the range of care environments which might be  
5 encompassed within the overall umbrella of the concept  
6 of secure accommodation and the nature of the different  
7 needs that may need to be prepared for and accommodated  
8 within that broad church of secure accommodation.

9 We have talked about the value to the Inquiry of  
10 providing information to the Inquiry about the range of  
11 different secure care environments that currently exist  
12 and may exist and how an individual child comes to be in  
13 one of those different kinds of environments, depending  
14 on, for example, the nature of any offence that they've  
15 committed, the degree of risk that they're assessed as  
16 presenting in the future. That's certainly, my Lady,  
17 something that I will be taking away with those  
18 instructing me to try to provide for information to the  
19 Inquiry about how that has operated in the past, how it  
20 operates now and how it's expected to operate in the  
21 future.

22 LADY SMITH: Is an essential element of Scottish Government  
23 moving forward on this that they become well aware of  
24 the risks involved? I'm interested obviously in the  
25 risks of it going wrong in the sense of another way of

1           creating an environment where children are at risk of  
2           abuse occurs?

3           It's a risk assessment challenge, isn't it?

4   MS O'NEILL:  It is, my Lady.  What I would say to that --  
5           I think this reflects the evidence that has been given  
6           by Neil Rennick -- is that in many respects that  
7           challenge is not new and it's not going to be radically  
8           newer as a result of this Bill, because as we have seen  
9           from the declining numbers of children being  
10          accommodated in the prison estate, there is already in  
11          practice a move to accommodate children who might  
12          otherwise have been in custodial environments to  
13          accommodate those in secure care and so that risk  
14          assessment and that work is already being done in  
15          respect of those children.

16          Again, I certainly don't want to trivialise the  
17          importance of the proposed legislative change, but  
18          I think the position of Scottish Government would be  
19          that that is to reflect what has been the policy  
20          direction for some time and to prevent any risk of  
21          children being moved to the prison estate.

22   LADY SMITH:  I would hope that work is also being done to  
23          assess genuinely how well is this working for the  
24          children in this new regime.

25          You don't need to comment if you don't know the



1 answer to that.

2 MS O'NEILL: My Lady, part 8 of the submission refers to the  
3 work that is being done by the Children and Young  
4 People's Centre for Justice in the wider context of  
5 secure accommodation. That's the report to which I made  
6 reference at the beginning that we will share with the  
7 Inquiry, it's publicly available but happy to direct the  
8 Inquiry to where it's publicly available and that is  
9 an interim report published this month. A final report  
10 is anticipated in the spring.

11 I'm conscious, my Lady, that it is likely to be  
12 something that will be looked at by the Inquiry and  
13 indeed by me and by the Scottish Government when the  
14 Inquiry comes to look in more depth at secure care,  
15 which I understand to be a little bit further down the  
16 line, by which time the final report may be available.

17 LADY SMITH: I do recall Professor Coyle, when he was being  
18 asked questions about Polmont and about Polmont in the  
19 1970s, which by then was accommodating not only those  
20 who hadn't committed any offences, it may be for example  
21 they were there because of an unruly certificate, but  
22 also those who had.

23 He accepted that that was a departure from what  
24 borstals were supposed to be all about. It was  
25 a departure from the vision that the creators of the

1 borstals and places like Polmont had, but then he  
2 observed, with the benefit of the wealth and length of  
3 his experience, that what had happened over 50 years was  
4 aspirations had been tempered by experience.

5 I suppose I would like to hear that the risk of that  
6 is going to be recognised by Government as they move  
7 forward with this new project.

8 MS O'NEILL: I think, my Lady, your Ladyship's comments will  
9 have been well heard.

10 LADY SMITH: Thank you.

11 I'm sorry, I took you way down a rabbit warren. We  
12 can come back above ground now.

13 MS O'NEILL: As I mentioned, I don't think I will read the  
14 remainder of section 8. It's there for the Inquiry and  
15 to the extent that it deals with secure accommodation,  
16 clearly that may be something that is revisited at  
17 a later stage.

18 The last section is in relation to reform of the law  
19 relating to inspection of education providers, which is  
20 again a topic which has been of concern to the Inquiry.

21 At paragraph 9.2 I note that on 7 November the  
22 Cabinet Secretary for Education and Skills made  
23 a statement to Parliament on the subject of education  
24 and skills reform. Among other things, that statement  
25 dealt with the consultation on the proposed Education

1 Reform Bill.

2 The consultation records that the Scottish  
3 Government accepted in principle the recommendations of  
4 Professor Kenneth Muir in his 2022 report, that a new  
5 inspectorate body should be established, with its  
6 independence enshrined in legislation and with  
7 governance that reflected that independence.

8 The consultation exercise seeks views on two options  
9 for reform.

10 The first would remove the inspection function from  
11 Education Scotland to create a distinct and separate  
12 executive agency and that type of education inspectorate  
13 would be separate from Education Scotland but would  
14 remain directly accountable to Scottish Ministers and  
15 would have a specific and separately defined remit.

16 The second option would involve establishing the  
17 role of HM Chief Inspector of Education for Scotland as  
18 an independent office holder and that Inspector would in  
19 that capacity have primary responsibility for setting  
20 the schedule, frequency and focus for inspections as  
21 opposed to that remaining under the legislative control  
22 of Scottish Ministers.

23 The consultation sought responses by yesterday and  
24 I'm afraid, my Lady, I'm not in a position to give any  
25 further update on the responses to the consultation or

1           the Government response to those responses.

2   LADY SMITH: Oh my goodness, are you telling me that

3           an analysis of the responses to the consultation hasn't

4           yet been completed?

5   MS O'NEILL: It may well have been, my Lady, but the results

6           have not been communicated to me.

7   LADY SMITH: I'm sure. We can watch for the publication of

8           responses to the consultation in due course, which will

9           no doubt be after the festive period.

10   MS O'NEILL: I imagine so, my Lady.

11           My Lady, unless I can assist your Ladyship further

12           those are the interim submissions for the Scottish

13           Ministers.

14   LADY SMITH: I'm very grateful to you, Ms O'Neill. I have

15           no further questions, thank you.

16           Mr Peoples, is there anything you have to say?

17   MR PEOPLES: Not at this stage. I may have in due course,

18           but I think that's all for today and that concludes this

19           chapter.

20           We will resume with a new chapter in the new year.

21   LADY SMITH: On 9 January?

22   MR PEOPLES: Yes. We'll deal with establishments with which

23           the De La Salle Order were involved.

24   LADY SMITH: Thank you very much.

25           I wish you all a very happy Christmas and I hope

1 everybody gets a break over Christmas and new year.  
2 I look forward to seeing those of you and hearing from  
3 those of you that are going to be involved in the next  
4 part of Phase 8, the De La Salle Order's provision, that  
5 starts on 9 January.

6 Thank you.

7 (10.49 am)

8 (The Inquiry adjourned until 10.00 am on  
9 Tuesday, 9 January 2024)

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